

Congress of the United States
Washington, DC 20515

September 17, 2019

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Ave., SW
Washington, D.C. 20202

Dear Secretary DeVos:

We are gravely concerned by the recent report from the Metropolitan Educational Research Consortium (MERC) highlighting racial inequities in school discipline across the Richmond region.¹ This study, entitled “Understanding Racial Inequity in School Discipline Across the Richmond Region,” suggests that Virginia school districts are failing to protect the civil rights of African-American students. We urge the Department of Education (“Department”) to review this report, and the other reports referenced in this letter, as it works to uphold the law and enforce critical protections for our nation’s students.

We remain alarmed by the disproportionately high suspension and expulsion rates of African-American students, as well as students with disabilities, in public schools. Exclusionary discipline practices have deeply harmful and long-lasting consequences for affected students. The enclosed MERC report highlights significant discipline disparities, particularly for subjective infractions, for minority students in Richmond region public schools. Specifically, the report notes:

In Virginia, Black students made up 23% of total enrollment in 2016, but between 50 and 58% of short- and long-term suspensions and expulsions. Black and Latinx students are also more likely to be referred for subjective behaviors such as disrespect or loitering... Another way of examining the same issue, Black students received 75% of all suspensions for subjective infractions like disrespect or defiance, but made up only 36% of region-wide enrollment that year.

This report provides more evidence of what is already known; nationally, black students are suspended around three times the rate of white students, often for subjective interpretations of misbehavior.² The U.S. Commission on Civil Rights’ July 2019 (“Commission”) report found similar results stating, “Students of color as a whole... do not commit more disciplinable offenses than their white peers... [but] receive substantially more school discipline than their white peers and receive harsher and longer punishments than their white peers receive for like offenses.”³

These discipline disparities are similar for students with disabilities. Although students with disabilities represent less than 15 percent of public school students nationally, they account for nearly a quarter of all student-referrals to law enforcement, school-related arrests, or school suspensions.⁴ Students of color with disabilities are particularly vulnerable; according to the Commission report, students of color with

¹ <https://bloximages.newyork1.vip.townnews.com/richmond.com/content/tncms/assets/v3/editorial/5/7d/57de4d2b-2bb0-54e6-ad86-4321cab04b6e/5d445af894f51.pdf.pdf>

² <https://www.gao.gov/assets/700/690828.pdf>

³ <https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf>

⁴ Ibid

disabilities “were more likely than white students with disabilities to be expelled without educational services.”⁵

Given these well-documented disparities, the Department’s elimination or significant weakening of important civil rights protections and safeguards for students is profoundly disappointing. These actions include the rescission of the 2014 Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline and other related documents (“Guidance”), as well as the attempted delay of implementation of the Equity in IDEA regulations regarding significant disproportionality in special education. The Guidance was released to assist states, districts, and schools to develop and implement strategies and practices to improve school climates and to ensure discipline policies and practices comply with federal civil rights law. Rescission of the Guidance reflects a lack of commitment to fully enforce federal civil rights law, and it complicated the ability of districts to fully understand their federal civil rights obligations. Conversely, the Equity in IDEA regulations are critical to addressing the misidentification and disproportionate over-representation of students in special education on the basis of ethnicity and race. Failure to enforce these regulations as required by law would have devastating effects for our children, particularly those most in need.⁶

Irrespective of the rescission of the Guidance, the Department has a legal obligation to enforce Title VI of the Civil Rights Act of 1964 and implementing regulations as directed by Congress, as well as the Equity in IDEA regulations. Reports, such as the MERC study, the Commission report, and countless others, demonstrate that more work must be done to ensure school districts are meeting their legal obligations to protect students’ civil rights. The Department has a responsibility to help school districts in such efforts, and to hold them accountable if they fail to do so.

In order to help schools meet their legal obligations, the Department should take every available step to provide school districts with the resources, guidance, training, and support necessary to ensure nondiscriminatory discipline in schools. This includes improving access to the Civil Rights Data Collection, as well as incentivizing proactive measures, such as positive behavioral interventions and supports, multi-tiered systems of support, trauma-informed care, culturally-responsive teaching, and implicit bias training, that will reduce exclusionary and aversive discipline practices. If implemented correctly, these steps can help improve school climate and culture and ensure students receive a safe, equitable, and high-quality education.

Again, we urge you to review the MERC report and the other referenced studies, and to protect students’ civil rights. Every child deserves to be treated equally and fairly; disparate treatment of any group is unacceptable. Thank you for your attention to this critical issue, and we look forward to your response.

Sincerely,



A. Donald McEachin
Member of Congress



Abigail D. Spanberger
Member of Congress

⁵ <https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf>

⁶ <https://thehill.com/homenews/administration/433312-federal-judge-rules-devos-illegally-delayed-obama-era-special>